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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

DION S. BOURDASE,

Appellant,

v.

NATALIE WORSTEIN,

Respondent.

F076768

(Super. Ct. No. 17CEFL02938)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. D. Tyler Tharpe, Judge.

Dion S. Bourdase, in pro. per., for Appellant.

Pascuzzi, Pascuzzi & Stoker and William E. McComas for Respondent.

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Respondent, Natalie Worstein, obtained a domestic violence restraining order against appellant, Dion S. Bourdase. Appellant appeals the court's order, arguing respondent did not present substantial evidence of harassing conduct, as she filed for the

[*] Before Levy, Acting P.J., Smith, J. and DeSantos, J.

restraining order in retaliation of appellant seeking damages from her by way of a small claims action. Upon review, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On May 24, 2017, respondent filed a request for a domestic violence restraining order. Appellant filed a response on June 12, 2017, and the court held a hearing on the restraining order on June 14, 2017.

Both parties were present at the hearing, and respondent was represented by counsel. Respondent's counsel was provided a copy of appellant's response in open court, and the court postponed the hearing for an hour to give counsel time to review the filing. After hearing testimony from both parties, the trial court granted the restraining order for a period of five years. Appellant filed a notice of appeal on December 7, 2017.

DISCUSSION

I. Civil Harassment Injunctions and the Standard of Review

California Code of Civil Procedure section 527.6, subdivision (a)(1)[2] provides "[a] person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section." The statute was enacted " 'to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution.' " (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.) "It does so by providing expedited injunctive relief to victims of harassment." (*Ibid.*)

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[1] The record provided on appeal is incomplete. The only relevant documents provided by appellant is a copy of the restraining order issued by the court after the hearing and a copy of the trial court's docket. None of the parties' filings in the trial court were provided. Additionally, if a reporter's transcript of the restraining order hearing was prepared, it was not provided to this court as part of the appellate record.

[2] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Section 527.6, subdivision (b)(3) defines "[h]arassment" as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." The statute also defines the three qualifying types of harassment, "unlawful violence," "a credible threat of violence," and "a knowing and willful course of conduct." (§ 527.6, subd. (b)(3).) "Unlawful violence" is defined as "any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but does not include lawful acts of self-defense or defense of others." (§ 527.6, subd. (b)(7).) A "[c]redible threat of violence" is defined as "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose." (§ 527.6, subd. (b)(2).) A "[c]ourse of conduct" is defined as a "pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of 'course of conduct.' " (§ 527.6, subd. (b)(1).) When a party seeks such an injunction, the court must hold a hearing, receive relevant testimony, and issue the injunction if it finds, by clear and convincing evidence, that unlawful harassment exists. (§ 527.6, subd. (i); *Nora v. Kaddo* (2004) 116 Cal.App.4th 1026, 1028.)

We review the trial court's decision granting a restraining order for substantial evidence. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.) " 'The appropriate test on appeal is whether the findings (express and implied) that support the trial court's entry of the restraining order are justified by substantial evidence in the record.

[Citation.] But whether the facts, when construed most favorably in [petitioner's] favor, are legally sufficient to constitute civil harassment under section 527.6, and whether the restraining order passes constitutional muster, are questions of law subject to de novo review.' [Citation.]" (*Id.* at p. 497.) "[When] assessing whether substantial evidence supports the requisite elements of willful harassment, as defined in … section 527.6, we review the evidence before the trial court in accordance with the customary rules of appellate review. We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value." (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) Appealed judgments and orders are presumed correct, and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

II. Analysis

A. The Parties' Arguments

Appellant alleges the court should not have granted the restraining order as he had been in a relationship with respondent several years prior, but he had no contact with her for over two years prior to him filing a small claims action against her to recover money she owed. Appellant claims respondent only threatened him with and filed the restraining order in retaliation to his efforts to be repaid. Appellant also contends there was insufficient evidence to support the court's finding he engaged in abusive or harassing conduct, or that respondent was justified in having an imminent fear of injury by appellant. He claims respondent made false and inconsistent statements and misrepresentations at the hearing.

Respondent contends she presented sufficient evidence to support granting the restraining order based on several instances of physical abuse by appellant of her and her two minor children during their relationship in 2014. She also alleged appellant acted inappropriately and erratically during the restraining order hearing, providing the judge

firsthand observations of his harassing behavior. Based on the past abuse, respondent was concerned for her safety when again contacted by appellant through the filing of the small claims action and sought the instant restraining order.

B. Lack of Appellate Record

Here, the parties have failed to provide an adequate record on appeal to allow review of whether the evidence presented at the hearing was sufficient to grant the restraining order. As stated, the only relevant records provided by the parties was a copy of the order granting the restraining order and the trial court's docket. The trial court issued the order granting the restraining order using the Judicial Council of California form DV-130. The order states the hearing on the restraining order was held on June 14, 2017, both parties were present at the hearing, and the terms of the restraining order, but does not include the evidence presented at the hearing or the court's reasoning for granting the restraining order. The minute order contained on the court docket states "Court hears testimony from both parties. After testimony the court is satisfied that a restraining order will issue." While we are aware that a hearing was held, and testimony was presented, we lack any knowledge of the evidence presented or the reasoning of the court in granting the restraining order.

The most fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct and "[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent." (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.) "[A] trial court's judgment is presumed correct, and so ordinarily will not be set aside on appeal absent an affirmative showing of reversible error." (*Samara v. Matar* (2018) 5 Cal.5th 322, 335; *Denham*, at p. 564 ["[E]rror must be affirmatively shown"].)

It is the appellant's responsibility to include in the appellate record the portions of the record relevant to the appellant's issues on appeal. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1002–1003; *Bianco v. California Highway Patrol* (1994) 24

Cal.App.4th 1113, 1125.) Failure to provide an adequate record on an issue requires the appellate court to resolve the issue against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296; *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362 [judgment must be affirmed where appellant failed to present adequate record for review].)

As explained, appellant failed to provide this court with copies of the moving papers and exhibits associated with the request for the domestic violence restraining order. Additionally, appellant did not provide a copy of the transcript of the hearing setting forth the testimony provided or the reasoning of the trial court in granting the restraining order. Accordingly, we must presume the trial court's judgment is correct and necessarily affirm the judgment as we are unable to review the relevant record. (*Samara v. Matar*, *supra*, 5 Cal.5th at p. 335; *Maria P. v. Riles*, *supra*, 43 Cal.3d at pp. 1295–1296.)

C. Disagreement with the Factual Findings of the Trial Court

Based on his recitation of the facts contained in his appeal, appellant disagrees with the trial court's determination that there was clear and convincing evidence of unlawful harassment to warrant issuing the restraining order. (§ 527.6, subd. (i).) Because the court granted the restraining order, we must presume the court properly determined that respondent carried her burden of proof that appellant engaged in harassment based upon a showing of "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose" which resulted in respondent suffering substantial emotional distress. (§ 527.6, subd. (b)(3); *Maria P. v. Riles*, *supra*, 43 Cal.3d at pp. 1295–1296; *Oliveira v. Kiesler*, *supra*, 206 Cal.App.4th at p. 1362.) Thus, appellant failed to show the trial court erred.

DISPOSITION

The judgment is affirmed. Each party to bear his or her own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)[3]

[3] In general, the prevailing party is entitled to his or her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1)–(2).) While respondent is the prevailing party, we find in the interests of justice she is not entitled to costs on appeal. Her arguments presented on appeal were not of assistance to the court, and our decision to affirm was based on reasons other than the ones presented. (Cal. Rules of Court, rule 8.278(a)(5); *Credit Suisse First Boston Mortgage Capital, LLC v. Danning, Gill, Diamond & Kollitz* (2009) 178 Cal.App.4th 1290, 1302.) Additionally, in the last sentence of her brief, respondent requests an award of attorney fees on appeal. We deny her request for attorney fees as she has not developed any argument or analysis on the subject. This denial is without prejudice to respondent seeking such fees from the trial court. (See, e.g., *Banning v. Newdow* (2004) 119 Cal.App.4th 438, 458–459.)